

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Nadine Gazzola, individually, and as co-owner,
President, and as BATFE Federal Firearms Licensee
Responsible Person for Zero Tolerance
Manufacturing, Inc.; *et al.*

Civ. No.: 1:22-cv-1134 (BKS/DJS)

Plaintiffs

v.

KATHLEEN HOCHUL, in her Official Capacity
as Governor of the State of New York; *et al.*

Defendants

**DECLARATION OF PLAINTIFF
CHRISTOPHER MARTELLO, d/b/a “IKKIN ARMS”**

1. I am Christopher Martello and I make this Declaration under penalties of perjury. These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.
2. I oppose all laws complained of in this case. I submit this “Declaration” to highlight certain of my background, credentials, employment, licenses, and relevant experience. I reserve the right to submit such further declarations, testimony, and exhibits as may be necessary to support our claims.
3. Footnotes within this document that provide citation of law are inserted by Counsel. I attest that I am generally, as a layman, familiar with the laws stated, discussed, and

argued herein. Legal citations in footnotes are provided by Counsel to the Plaintiffs as a courtesy to the Court due to the complexity of this case.

4. I am not a “disqualified person,” as this term is defined under 18 U.S.C. §922(g).
5. **Business & Personal Background.** I am the CEO and owner of “Performance Paintball, Inc.,” d/b/a “Ikkin Arms,” a New York business founded in 2001. The business premises is located in Rochester, Monroe County, New York.
6. I have used firearms since I was 6-years old. My father taught me how to shoot an 8-shot .22 revolver. I purchased my first firearm after I joined the Army National Guard at age 17 to earn money for college. At the time, my father was a Major in the Army Reserves and my mother was a Captain. I joined the Infantry, rising to the rank of Sergeant. I excelled at the training of troops. I specialized in all aspects of military tactics, battle drills, weapons, and how to deploy troops and weapons onto a battlefield to maximize enemy damage while minimizing casualties to our forces.
7. I taught these same tactics at the Empire State Military Academy at Camp Smith. My job there was to teach the final phase of Officer Candidate School.
8. I was honorably discharged from the military in January of 1996.
9. And, I have an unrestricted concealed carry permit issued by Livingston County. My concealed carry permit is current and it reflects an accurate listing of the handguns I personally own.¹

¹ Attorney of Record note: I am not providing the detail level in these public documents as is available from the Co-Plaintiffs in the interest of their personal safety.

10. I currently own several rifles and shotguns. Any rifles I own personally were purchased prior to September 1, 2022. I have not purchased any semi-automatic rifles since the SAFE Act was passed. All of these laws directly effect law abiding citizens and do nothing to address the criminals committing the crimes.
11. I desire to purchase additional semi-automatic rifles for personal self-defense and sporting purposes. I am unable to do so because Livingston County is not offering a semi-automatic license, which is required to be presented to an FFL to lawfully purchase such a rifle.
12. I continuously seek up-to-date information about legislation and laws impacting the firearms industry and the Second Amendment. For example, I have attended “Shot Show,” the annual, multi-day firearms industry convention, hosted by the National Shooting Sports Foundation, which includes not only FFL vendors, but also presentations by attorneys, federal officials, and ATF agents.
13. **Federal and State Licenses.** I am the “Responsible Person”² for a Federal Firearms License, Type-01, “Dealer in Firearms/Gunsmith.” I also hold an FFL-07, as a “Manufacturer of Firearms.”
14. My federal licenses were first issued in 2012, have since been continuously renewed, and are current.

² “Responsible Person” is defined by BATFE on Form 7, “Definitions,” as “In addition to a Sole Proprietor, a Responsible Person is, in the case of a Corporation, Partnership, or Association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the Corporation, Partnership, or Association, insofar as they pertain to firearms.”

15. I have comparable licenses from New York State, issued through Monroe County, as “Dealer in Firearms. These licenses were first issued in 2014 and has been continuously renewed and are current.
16. I also have a NYS Sales “Gunsmithing License”, which is also current through July 2023.
17. **Ikkin Arms.** As a dealer, I sell and transfer firearms to in-state and out-of-state customers. We also manufacture our own line of custom tactical firearms. We specialize in long range big bore shooting solutions. We offer in-house hydrographics and Cerakote coatings. I was hoping to add custom laser engraving in the future, however the cost to comply with these new laws has put a strain on my businesses cash flow.
18. Firearms inventory at Ikkin Arms is 80% AR/AK/“tactical” firearms and traditional long guns, and 20% handguns.
19. I also stock cleaning equipment, apparel, targets, upgrades, magazines, scopes, slings, trigger locks, and gun cases.
20. **Community Involvement.** I discount my guns or give them away to several organizations conducting fundraisers, like SCOPE, Ducks Unlimited, and GOA-NY. They use the firearms as raffle items to raise funds for organization activities.
21. **The “SAFE Act,” in comparison.** When the “SAFE Act” passed, I read it in about 2-1/2 hours and could poke holes in it, but understood what it was after. In just that first reading.
22. The new laws from Summer 2022 took me almost a week to read through because there was so much language that was inconsistent, incomplete, and scattered. Even with a serious investment of time on that first reading, I still couldn’t figure out most of it. I have

re-read it in whole or in part several times since and my comprehension has not improved. I am left with a long list of questions that make it difficult to understand the new environment in which I am operating and expected to operate.

23. What the new laws are doing to gun owners is disturbing. But, when I saw what it was going to do to gun shops, candidly, I thought it was even crazier.
24. It's also strange how no one outside of a small circle of people seem even the least bit aware of all of the new laws specifically targeting gun dealers. People are obsessing over "sensitive places" – which is a straight up unconstitutional issue under *NYSRPA v. Bruen* – but it's like they have no idea the sky is about to fall on top of their heads if we get past December 5, 2022 and there is no judicial relief. The entire gun dealer industry in New York is at risk of collapse because of these new laws and that is not a The Sky is Falling, statement.
25. People are coming to me with questions. A Sheriff. A County Court Judge. A firearms instructor. One guy came in on August 31 with a written list of questions. Most of the questions are personal, relating to concealed carry restrictions, the new SAR license, and ammunition sales records. People are not asking the right question which is: how do we protect the supply chain of firearms so that New York residents can continue to exercise their Second and Fourteenth Amendment rights?

Impending December 5, 2022 Impact:
Federal Pre-Emption and Fifth Amendment Necessitated TRO

26. The ATF doesn't have it. Congress didn't give the ATF the authority to take it; only to access it. And Congress said no state or subdivision locality could have it either. Just take a look at FOPA, the "Firearms Owners Protection Act."
27. This was all clearly spelled out in the Firearm Owners Protection Act of 1986,³ federal legislation signed into law by President Reagan and that I know, read, and talk about in conversations with other FFLs, customers, and government officials.

"No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, **nor that any system of registration of firearms, firearms owner, or firearms transactions or dispositions be established.**"
(emphasis added)

28. And yet, multiple of the new laws by the Defendants mandate a taking of it.
29. The "it" I'm talking about is federal firearms compliance records that are maintained *only* by the Federal Firearms Licensee as set out through the Brady Act of 1993. The NICS background check records include documents I create such as the "Book of Acquisitions & Dispositions" (the "A&D Book") and the personal and firearms data I collect for the ATF Form 4473.⁴ I'm talking about the Defendants building an illegal registry of every firearm bought and sold in New York and every customer who does so, while co-opting the NICS background check system and merging those contemporaneous records and

³ Pub.L. 99-308, amends, *inter alia*, 18 U.S.C. §921 *et seq.*

⁴ 27 CFR §478.124 and 27 CFR §478.125(e); *see, also* 18 U.S.C. 923(g)(1)(A). The ATF Form 4473 is attached as an Exhibit to this Motion.

database build-outs with the new, massive concealed carry and semi-automatic rifle licensing systems.

30. If you take the time to read what the Defendants are presenting as a superior approach to background checks is really the Defendants creating a system through which they can control the purchase of every firearm, taking up to thirty days (30-days) to decide their response to a firearms background check inquiry to a dealer.
31. Government amassed firearm and firearms owner databases are illegal under federal law.⁵ Converting handgun and semi-automatic rifle purchases into a permitting scheme of this nature is unconstitutional under the Second and Fourteenth Amendments and the new *NYSRPA v. Bruen* decision of the U.S. Supreme Court.
32. The new laws mandate that dealers in firearms transmit federal firearms compliance records to the Defendant NYS Police, including copies of the A&D Book every six months, and that we produce separate, monthly inventory reconciliation reports.⁶ These are exactly the records, types of records, and reports prohibited from government grab.⁷
 - a. Those A&D Book entry⁸ includes the make, model, serial number, caliber and source of acquisition, plus the customer or other disposition of a firearm. Customer information, whether for acquisition or disposition, includes personal information including name, address, and any license number (e.g., handgun permit number).

⁵ See 18 U.S.C. §926 and 28 CFR §25.11(b).

⁶ NY Gen Bus §875-f.

⁷ 18 U.S.C. §926; see also 18 U.S.C. §923(g)(1)(A).

⁸ 27 CFR §478.125(e) for dealers of firearms.

- b. The A&D Book entry corresponds to the AFT Form 4473,⁹ which includes firearms information (manufacturer, model, serial number, type, caliber or gauge) and 19 fields of personal information (including place of birth, Social Security Number, date of birth, biometrics, citizenship, and disqualifying information).¹⁰
- 33. The new laws mandate FFL gun dealers in New York commit federal crimes with their federal firearms compliance records and then pay for the Defendants to build their Frankenstein “Point of Contact” system. The new statutory language is clear: the Defendants are building and linking “*databases*. ”
- 34. The new laws bear no resemblance to the Brady Act data, security, and record retention and destruction provisions,¹¹ including these glaring deficiencies:
 - a. No limits on what is swept up into it.
 - b. No siloing of data used by it.
 - c. No limits on the purposes it is to be used for going forward.
 - d. No records retention and destruction parameters.
 - e. No privacy restrictions.
 - f. Not even any security protocols, as there are in the Brady Act, to state where the data will be housed and what technology will be used to protect it.

⁹ 27 CFR §478.124.

¹⁰ A copy of the ATF Form 4473 is included as an Exhibit to this Motion.

¹¹ 28 CFR §25.11, *et seq.* See, for example, under 28 CFR §25.1, “Purpose and authority,” “The regulations in this subpart...include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been denied the right to obtain a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local enforcement agency.”

g. The new laws are just an unfettered data grab of an individual's most personal information, from Social Security Number to eye color to firearms serial number.

h. The new laws are also designed to be burdensome to gun dealers with additional paperwork and record keeping.

35. And the kicker is two-fold. First, Defendant Hochul makes a big public deal about her pride in keeping New York crime data from the FBI.¹² Second, Defendant Hochul refusal to share New York crime data with the FBI/ATF for the federal NICS background check system means that it's not available to them or any other state when a background check is run at an FFL anywhere in the U.S., including in New York. Then, she takes the position "I don't need to have numbers. I don't have to have a data point to point at to say this will make —"¹³

36. The singular flaw in the Brady Bill, if the aim was to create a national background check system, was the option offered the states whether or not to contribute their state criminal data to the system.

37. But, the Brady Bill was passed in 1993 and built out for five years to 1998. To put it in context, it was in the early days of large-scale, civilian data systems available for purchase on the open, commercial market, outside the U.S. military.

38. Fast forward to at least the past fifteen years and there's just no excuse for New York to be refusing to submit state crime data to the federal NICS system. NICS is a well-oiled

¹² Official website of the Governor of New York, "Governor Hochul Updates New Yorkers on Extraordinary Session" (July 1, 2022) available at <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-hochul-updates-new-yorkers-extraordinary-session>

¹³ Questioning reporter was CBS News (Albany), anchor Anne McCloy; find on her Twitter feed (June 29, 2022) at <https://twitter.com/AnneMcCloyNews/status/1542285958703366146>.

machine that is offered free to the public and FFLs to use as a crime prevention tool. It's also free for the states to contribute data.

39. Governor Hochul rails on "illegal inter-state traffic in firearms." All the new laws could be deleted, and she could substitute her own voluntary participation in the federal NICS background check system and we'd all be safer. The Defendants do not want anyone to know the New York criminal conviction numbers, and the NICS record submissions numbers are public.
40. I am unwilling to waive my Fifth Amendment rights in favor of illegally shipping records to the Defendant NYS Police plus signing an annual compliance certification form. The form, by-the-way, is not even published. It could be only one question, "Are you in compliance with all NYS laws governing the routine operations of a dealer NYS-licensed dealer in firearms?" I won't be able to sign that on December 31. And the fact of me not signing it will amount to an admission against interests. Sending it in saying "no" will be an admission against interests. Submitting federal firearms compliance records will break federal law. I'm pinned.
41. I oppose the NYS Police mandate for the submission of federal firearms records and I oppose them, other law enforcement agencies, manufacturers, and manufacturer's agents from having access to the records.¹⁴

¹⁴ NY Exec §228.

42. I oppose the grant of open-ended authority to the Defendant NYS Police to issue any additional regulations, given their 100% lack of compliance with specific responsibilities under the new laws.¹⁵
43. I am, the Co-Plaintiffs are, and FFLs engaged in the lawful stream of commerce in firearms are entitled to know what regulations we are being asked to fulfill and to have an opportunity to push-back through the courts against those regulations that we believe are illegal and/or unconstitutional against the Second, Fifth, or Fourteenth Amendment and/or void-for-vagueness. You don't become an FFL with an intention to break the law, in fact when I received my license, the ATF agent gave me the book for federal gun laws and procedures for my license and said, make sure you don't do anything wrong or you are going to jail. That let me know right away, read and learn all you can, ignorance of these laws or procedures is not a defense.
44. **FFL-01s at the Forefront with the ATF.** The Defendants are foolish in their determination to put us out of business. FFL dealers in firearms are the front line of prevention of sales to disqualified persons.¹⁶ We are also the front line of reporters of multiple handgun purchases.¹⁷ We're in the unique retail position of not being required to complete a sale of a firearm, even if a NICS check comes back "PROCEED."
45. The ATF Field Agents are always available to answer questions and they know the answers. I also use the ATF website, particularly for updates to federal gun laws.

¹⁵ NY Gen Bus §875-h.

¹⁶ 18 U.S.C. §922(t).

¹⁷ ATF Form 3310.4, "Report of Multiple Sale or Other Disposition of Pistols and Revolvers" at <https://www.atf.gov/firearms/docs/form/report-multiple-sale-or-other-disposition-pistols-and-revolvers-atf-form-33104/download>.

46. I have been through a successful ATF on-site audit.¹⁸ It was a shared experience of good business practices in sync with federal law, in an atmosphere of shared objectives.
47. I have responded immediately to ATF firearms trace requests. It was prompt and professional communication in both directions. Response to trace requests must be made within 24-hours.¹⁹
48. By contrast, using the Buffalo mass murder as the “emergency” to rush through the new laws, the Defendants’ animus should be obvious to anyone who looks at the results. There remain unanswered questions of Defendant NYS Police in their handling of their response to the call from the school for a disturbing “murder-suicide” utterance from that criminal defendant, who they reportedly responded, interviewed, and transported and dropped off at the Binghamton General Hospital – end of their involvement.²⁰
 - a. The Defendant Gov. Hochul is now mandating that the Defendant NYS Police develop and publish a training curriculum to be used statewide, which includes the warning signs of and responsive techniques for suicide.²¹
 - b. There is no state investigation into the responding officers, into NYS Police protocols, if any, or into the hospital. No publication of any NYSP protocols for their officers on mental health interventions. No release of any training materials by mental health professionals for NYSP rank-and-file officers.

¹⁸ 18 U.S.C. §923(g)(1)(B).

¹⁹ 27 CFR §478.25a.

²⁰ Nickeas, Peter; Tolan, Casey; and, Langmaid, Virginia, CNN, posted to WKTV.com News, “How the 18-year-old suspect legally obtained guns before the Buffalo mass shooting” (May 17, 2022) at https://www.wktv.com/news/state/how-the-18-year-old-suspect-legally-obtained-guns-before-the-buffalo-mass-shooting/article_d9a48408-0dbe-5ae6-b332-8173a8d7f848.html.

²¹ NY Pen §400.00(19)(a)(x).

- c. And, the very same agency, themselves mandated by the Defendant Governor to publish a curriculum (presumably) ahead of September 1, 2022, Defendant NYS Police and Division DCJS put out on the Internet a “memo” that does little more than plagiarize the statute. The “memo” does not even include the toll-free suicide prevention telephone number offered by state or federal agencies for the Veteran population.²²
49. New York couches most of its Second Amendment “permissions” as exceptions to crimes, as housed in the State Penal Law, even for business operations purposes.²³ I don’t have a working relationship with local Troopers. It’s not a negative comment; it’s a difference of primary purpose and mindset.
50. By contrast, ATF Field Agents view us as partners and treat us as such. My ATF Field Agents I know by name and phone number. The ATF Field Agents and the folks who answer the ATF “800” number for questions and the men and women who answer the NICS help line have a team attitude. We work together. I can count on them to have the information I’m after or to provide me guidance in a specific customer situation, and they can count on me and my customers to be eyes and ears in and around my shop and concerning just about anyone who walks through my doors.
51. And listen, there are serious federal penalties for failure to comply. There’s not only the loss of my licenses. There are federal crimes and federal jails and large monetary fines. Plus, I’m trapped in the checkmate of the new laws with the threat of crimes, fines, and jail

²² Attached as an Exhibit to this Motion.

²³ NY Pen §400.00(2).

time under the new laws. There's no way to satisfy both federal and state law. Federal law must be allowed to prevail.

52. To say I am very nervous about joining this lawsuit and bringing unwanted focus on me and my business by the Defendants. Is an understatement, but I don't see a choice. I am in the firearm business. I see these new laws and regulations as tool to not only me out business but to also discourage future New Yorker's from becoming gun dealers. I'm also an American. And, in America, when we believe a law is unconstitutional or illegal, we go to court.

Immediate Business Impact:

(1.) Loss of Revenue from Lack of Semi-Automatic Rifle License.

53. I am now prohibited from selling a semi-automatic rifle²⁴ unless the customer presents a new license, in terms of how I read the new laws.²⁵ As a direct result of the Defendants failing to meet their requirements under the new laws, I am losing sales revenues, income, and business value.
54. There appear to be some counties, however, offering persons with a concealed carry permit to amend that license to include semi-automatic rifle purchases. I don't see that in the new laws. I see it in the Defendant NYS Police "FAQ" sheet on their website, which is an Exhibit to this Motion, but I do not see that in the text of the new laws.

²⁴ NY Pen §265.66.

²⁵ Distinctions reflected in NY Pen §400.00(2), license; §400.00(3) application; §400.00(10(c) recertification every five years.

55. According to the Monroe County website, it is offering (for a \$129 filing fee) that a concealed carry permit holder can add the SAR to that license. This is an Exhibit to this Motion.
56. Go to Wayne County, and it, too, says a “semi-automatic rifle endorsement” can be added to an existing permit, but that if you do not have a pistol permit “You will need to contact the sheriff’s office to begin the process.” This, too, is an Exhibit to this Motion.
57. What I know is that I am prohibited from selling a semi-automatic rifle to a NY-resident customer who does not have a semi-automatic rifle permit.²⁶
58. This also limits my personal ability to purchase and use semi-automatic rifles. I have not purchased any since the SAFE Act, another bad law, passed in 2013.
59. This is a serious loss to sales of rifles at my store, and is a serious impediment to the exercise of individual Second Amendment rights.
60. The “semi-automatic rifle” is also known as “the modern sporting rifle.” According to the NSSF, AR-15 platform rifles are “...used by hunters, competitors, millions of Americans seeking home-defense guns and many others who simply enjoy going to the range.”²⁷ As of July 2022, the NSSF estimated, in conjunction with the ATF, and the International Trade Commission, more than 24 million such rifles went into circulation in the U.S. since

²⁶ NY Pen §265.66.

²⁷ National Shooting Sports Foundation website, “Modern Sporting Rifle: The Facts” at <https://www.nssf.org/msr/>.

1990.²⁸ However, this law doesn't just effect the AR platform rifles, it effects ALL SEMI AUTOMATIC RIFLES.

61. Since the new laws went into effect September 1, 2022, sales of semi-automatic rifles through my business for New York residents has dropped off to almost nothing.
62. There is no federal requirement of a license for the sale of a semi-automatic rifle. I am not aware of any history of such a licensing requirement.

Immediate Business Impact:

(2.) Loss of Revenue from Freeze on Firearms Safety Training Courses.

63. Prior to September 1, 2022, I offered private firearms training sessions, to customers only, covering firearms safety, storage, operation, and handling. I offered this as a courtesy. I did not charge a fee for this service. Anyone I trained was a customer, and their purchases were the compensation. As a direct result of the new laws, I am losing business revenue, income, and business value.
64. Prior to September 1, 2022, Monroe County did not require any type of firearms training.
65. I cannot and will not be eligible to offer firearms training for people seeking a pistol permit under the new laws. My training comes from years of experience in firearms, knowledge of firearms laws and application. I am also a former NCO in the United States Army and National Guard, who has trained soldiers for combat, as well as taught military tactics at the Empire State Military Academy. Even with these credentials, I'm not authorized to

²⁸ NSSF website, "Commonly Owned: NSSF Announces Over 24 Million MSRS in Circulation" (July 20, 2022) at <https://www.nssf.org/articles/commonly-owned-nssf-announces-over-24-million-msrs-in-circulation/>.

teach under the new statewide training program requirements which are now necessary to obtain a pistol permit in New York.

66. I am not aware of any instructors who are currently offering a firearms training course they are advertising as in compliance with the new requirements. The Defendants NYS Police and DCJS have failed to issue the curriculum and testing for such course, such that no training course could be offered.
67. Without instructors, customers cannot fulfill new training requirements and can neither apply for a first-time concealed carry license or renew an existing license.
68. I will not be able to complete the mandated training for existing concealed carry permit holders. This will result in an impediment to my exercise of my Second Amendment rights.

Immediate Business Impact:

(3.) Loss of Revenue from Plumet in Firearms and Ammunition Sales.

69. *What ammunition sales?* Is the easiest way I can convey to the Court what is happening to business as a result of the new laws. People are not coming in. Are not browsing in a relaxed manner. Those who do are not chatting and catching up on recent meetings of groups they belong to and what's on the legislative burner. A lot gets discussed in a gun shop – everything from “Are you registered to vote?” to “Let me help you with that ATF deny appeal.” The retail side of business has gone crickets.
70. It may be hunting season, but I don't have much inventory in traditional (wood stock) hunting rifles like an over-under or a double-barrel shotgun. I do not have antique firearms

in shop. These firearms are an insufficient inventory and volume of sales to sustain my business.

Constitutional-Regulatory Overburden as of December 5, 2022:

(1.) The “Safe” Mandate is Unsafe.

71. A safe may be useful in a homeowner situation, but it's excessive for the FFL.
72. Every time you move a firearm it could fall or get scratched. It devalues the firearms.
73. All day long, I handle only one firearm with one customer at a time.
74. The Defendants' mandate is to handle the entire inventory twice per day.²⁹
75. I do already have one safe with seven locking bolts and an electronic lock. It weighs 700 pounds. It cost \$1,800, which did not include moving and set up. It has a 60-minute fire rating. It would not hold even 1/4 of my long guns. It might, arguably hold my inventory in handguns, if it was reconfigured.
76. My existing premises is leased commercial property. At best, it could physically fit in three safes of the same specifications. This would be 3,500 pounds of weight. I would be required to construct a separate locked room with concrete slab at 10' x 12' x 8' to accommodate the three safes. Cost of two new safes would be \$3,600. New construction expenses would be approximately \$12,500. Moving the existing safe plus shipping and installing the additional two safes would cost \$3,000. That's a hit of nearly \$20,000.
77. Then, I would be required to have separate storage for ammunition.

²⁹ NY Gen Bus §875-b(1).

78. That's without factoring in how much time it would take at the start and the end of every day to move every firearm into and out of the safes in their separate room. I'd never have any hours remaining to be opened. Every thief on the block in New York would view it as prime picking hours, including the newer techniques of smash and grab using cars.
79. It's just not realistic, to say nothing of unprecedented to the firearms industry. It's also unprecedented in terms of other industries. Alcohol is not locked up by stores. Cigarettes are not locked up by stores. Cannabis, not locked up; instead, being flashed in green neon in windows since 2021 (along with the suppression of marijuana convictions by the NYS Division of Criminal Justice Services (DCJS)).^{30,31} Gambling, legalized January 2022 – touted by Defendant Governor Hochul, as “the best” such revenue “in the country” in her announcement of July 8, 2022, just days after jamming through the new laws against us.³² No way to lock that one up.

Constitutional-Regulatory Overburden as of December 5, 2022:

(2.) The Surveillance Mandate is Technologically Infeasible

80. The new surveillance mandates³³ are technologically infeasible and the work-around I conceived is unaffordable.

³⁰ Ward, Rebekah, “A timeline of legalized pot in New York,” Times Union (April 1, 2022) at <https://www.timesunion.com/projects/2022/ny-legalized-pot-timeline/>.

³¹ N.B.: “Unlawful use” or addiction to a controlled substance, as defined under federal law, is a federal disqualifying factor for the purchase, use, or possession of firearms. 18 U.S.C. §922(g)(3).

³² Official website of NYS Governor Hochul, “Governor Hochul Announces New York State’s Record Setting Mobile Sports Wagering Tax Revenue: In less than six months, NYS Collected \$302.3 million in Mobile Sports Wagering Tax Revenue – Far Exceeding Any Other State and Surpassing Expectations” (July 8, 2022) at <https://www.governor.ny.gov/news/governor-hochul-announces-new-york-states-record-setting-mobile-sports-wagering-tax-revenue>.

³³ NY Gen Bus §875-b(2).

81. I also own "Ikkin Industries," which is a true partner to law enforcement. We have developed a full line of state-of-the-art police evidence body cameras. Our camera can record day or night, and have such features as WiFi, GPS, and live 4G coverage. We offer video storage solutions and training certifications for all of our products.
82. I run a brick-and-mortar pro shop, about 2,000 sq. ft. in size, with retail space and a separate 3,000 sq. ft, production area for hydrographics and Cerakote coating. I have cameras positioned everywhere in my shop, already. I videotape everything in high resolution. If I'm broken into, robbed, or murdered, the audio and video is being recorded.
83. Even with the 16-terabyte drive I'm using; the drive can only host one month of data. I have it set to run 15-days and then overwrite.
84. The Defendants want it maintained for two years. Why? It's an arbitrary length of time. I don't know anyone in any industry that retains in-house data longer than three months. It's a financial impossibility for even the larger gun shops.
85. A person would have to either pull out one hard drive per month and save for two years, or, decrease the resolution to a much smaller file size to where you wouldn't be able to recognize the face of the person and there would be no audio. Even then, the 16-terabyte drive wouldn't do it for a two-year run.
86. Forced to run an estimate using the 16 Terabyte hard drive, here's my analysis:
 - a. Eight cameras would be required to cover the statutorily-mandated positions.
 - b. Using my current system, I would need twenty-four (24) of the 16 Terabyte drives for two years of storage of eight cameras worth of data. Each drive costs at a minimum

\$450, so, \$11,000, plus my time every month to pull each hard drive, label each drive and store in a fireproof safe the recorded data.

- c. If possible, the drives would need to be installed in a network file server solution, which is currently not available for purchase commercially.
 - d. Alternatively, I'd have to put together a system with eight drives at \$2,500 each, so a \$33,000 computer system for network file storage with back-up.
 - e. The configuration and set up exceeds \$40,000.
 - f. I would be competent to set it up, but at a serious amount of lost time and while closed. Then to monitor. Then to trouble-shoot.
87. I do not want any third-party vendor to have 24/7 video access to my shop or its security system and certainly not for a two-year period. The ability of a third-party vendor – including one that can hire employees with criminal records (another violation of federal law) – makes no sense. It will provide too much opportunity to systematic and large-scale theft in a way that is not a current vulnerability.
88. I will not be in compliance by December 5, 2022.

Constitutional-Regulatory Overburden as of December 5, 2022:

(3.) No Added Value in Third-Party Alarm Systems

89. To comply, I would have to monitor eight points and I am trying to find a company to provide a bid I think would meet what little information is in the statute. The Defendants have failed to issue the additional details required of them under the statutes.

90. I have a current security system for the premises, connected to my cell phone for all windows and doors. I also have bars installed.
91. As part of a package of expenses, the whole is unfeasible. If nothing is halted by the Court, I will have to review numbers and make a decision whether to stay open or not.
92. I will not be in compliance by December 5, 2022.

Constitutional-Regulatory Overburden as of December 5, 2022:

(4.) Exclusion of Minors from The Store

93. I am not going to put a security guard or an employee or a lawyer at the door to the shop to figure out whether someone is under 18, whether the adult is a parent or a legal guardian.
94. I grew up around firearms. I was a kid under 18, learning how to hunt from my family. Generations. Traditions. History of country and family. There are countless reasons not to interrupt our cultural rights, including our constitutional rights under *NYSRPA v. Bruen*.
95. I will not be in compliance by December 5, 2022.

Conclusion

96. There was apparently a time in her life when Defendant Kathy Hochul, from Buffalo, New York, then candidate for and elected to Congress, applied for and received an NRA's "Political Victory Fund" endorsement. At that time, in 2012, Hochul said,

"I am honored to receive the endorsement of the National Rifle Association, an organization that represents thousands of Western New York sportsmen. As a county clerk, I was a staunch advocate

for sportsmen, and I have carried through on my commitment to protect their rights in Congress.”³⁴

97. In another article, Hochul’s campaign “...credited her tenure as Erie County clerk for building a pro-gun record. It pointed out she streamlined the government’s permit application process and provided gun shows with staff and technology to ensure quick and safe sales.”³⁵
98. In 2011, then Congresswoman Hochul had voted to expand the reach of a New Yorker’s concealed carry permit, voting in favor of the “National Right-to-Carry Reciprocity Act” (H.R.822).³⁶
99. Now running for New York Governor, she says to the media, “This is not the time to talk about that,”³⁷ when asked to explain her change of attitude.
100. I think if I could say any one thing to the Court, it would be to consider how the Defendants have politicized firearms compliance in New York into a horrible distortion of federal firearms compliance law. The federal is deliberate, steady, and a partnership. With these new laws, it is antagonistic, illegal, unconstitutional, and a mess. Defendant Hochul would have done better to think of her days as a County Clerk and her staff working with FFLs, pistol permit holders, and the gun show in Buffalo at a time when *NYSRPA v. Bruen*

³⁴ Maloni, J., “Hochul endorsed by National Rifle Association,” Niagara Frontier Publications (October 3, 2012) at <https://www.wnypapers.com/news/article/current/2012/10/03/108013/hochul-endorsed-by-national-rifle-association>.

³⁵ McCarthy, Robert, “Hochul receives backing of national guns rights group,” *The Buffalo News* (October 3, 2012) at https://buffalonews.com/news/hochul-receives-backing-of-national-guns-rights-group/article_b43d5767-fcd3-51fb-8b14-307c09d27930.html.

³⁶ Vote recorded at <https://www.congress.gov/bill/112th-congress/house-bill/822/all-actions>.

³⁷ Lisa, Kate, “Hochul dismisses question about past NRA endorsement,” Spectrum Local News (Albany) (May 18, 2022) at <https://spectrumlocalnews.com/nys/central-ny/politics/2022/05/18/hochul-dismisses-question-about-past-nra-endorsement>.

wasn't even a glimmer on the horizon but the Second Amendment was relatively safe outside of New York City.

101. We all need to get back to that.

102. I respectfully request this Court to halt the laws complained of and to grant such other immediate relief as is requested in this Motion.

Dated: November 7, 2022



Christopher Martello, individually
and as the Responsible Person for "Ikkin Arms,"
an FFL-01 Dealer in Firearms and
an FFL-07 Manufacturer of Firearms